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IN THE  
**Supreme Court of the United States**

OCTOBER TERM, 1956

No. 53

WILLIAM EARL FIKES,

*Petitioner*

v.

STATE OF ALABAMA,

*Respondent.*

ON WRIT OF CERTIORARI TO THE  
SUPREME COURT OF ALABAMA

PETITION OF RESPONDENT FOR REHEARING

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Now comes the respondent in the above-styled cause and respectfully applies to this Court for a rehearing and reconsideration of its decision of January 14, 1957, reversing the judgment and decision of the Supreme Court of Alabama.

**STATEMENT OF THE CASE**

The petitioner was tried and convicted in the Circuit Court of Dallas County, Alabama, under an indictment charging the offense of burglary in the first degree (Title 14, Section 85, Code of Alabama 1940). The trial was reviewed by the Supreme Court of Alabama, which affirmed the judgment of conviction and the sentence imposed. (**William Earl Fikes v. State of Alabama**, 81 So. 2d 303.) On November 19, 1955, the petitioner filed with the Supreme Court of the United States his petition for writ of certiorari directed to the Supreme Court of

Alabama. The Supreme Court of the United States granted certiorari (**William Earl Fikes v. State of Alabama**, 350 U. S. 993). The case was presented on oral argument on December 6, 1956 and the opinion announced January 14, 1957.

### **THE QUESTION PRESENTED**

Do the facts presented, relating to the confession "shock the conscience" to the degree necessary for a finding that the petitioner's rights under the Fourteenth Amendment to the Constitution were violated?

### **BRIEF AND ARGUMENT**

We earnestly submit that the facts of the instant case do not warrant reversal under the law as previously declared by this Honorable Court. In this connection we would respectfully point out certain facts, mentioned in the opinion which we deem worthy of elaboration.

The court alludes to the testimony of three psychiatrists (Op. p. 3). It should be pointed out that these witnesses talked to the petitioner on only one occasion for a period of two hours and obtained his history from the petitioner himself and a brief conversation with his father (R. pp. 286, 291, 294). It should also be pointed out that petitioner had held a regular job as a filling station attendant, dealing with the public generally for several months prior to his arrest.

This Honorable Court further says, "We do not criticize the decision to remove the prisoner before

any possibility of violence might mature, but petitioner's location and the conditions of his incarceration are facts to be weighed in connection with the issue before us." (Op. p. 6.)

Are Alabama authorities, indeed the authorities of any sovereign state, to have their actions in promptly moving to safeguard their prisoners, interpreted as an attempt to coerce a confession?

On page five of the Opinion the Court finds that a lawyer who came to the prison to see the prisoner was turned away. We would respectfully point out that the lawyer admitted that he had not been retained to represent the petitioner (R. p. 324). The prison officials testified that it was not their practice to permit the solicitation of business inside the prison (R. p. 331).

The Court then holds as follows:

"... Standing alone, the State's evidence establishes that the confessions in the present case were not voluntary within the meaning of the decisions of this Court.

"Here the prisoner was an uneducated Negro, certainly of low mentality, if not mentally ill. He was first arrested by civilians, lodged in jail, and then removed to a state prison far from his home. We do not criticize the decision to remove the prisoner before any possibility of violence might mature, but petitioner's location and the conditions of his incarceration are facts to be weighed in connection with the issue before us. For a period of a week, he was kept in isolation, except for sessions of questioning. He saw no friend or



relative. Both his father and a lawyer were barred in attempts to see him. The protections to be afforded to a prisoner upon preliminary hearing were denied him, contrary to the law of Alabama. He was questioned for several hours at a time over the course of five days preceding the first confession, and again interrogated at length before the written confession was secured.

"There is no evidence of physical brutality, and particular elements that were present in other cases in which this Court ruled that a confession was coerced do not appear here. On the other hand, some of the elements in this case were not present in all of the prior cases. . . ."

Should illiteracy bring the Fourteenth Amendment into play? Such was not the case in **Brown v. Allen**, 344 U. S. 443, 97 L. Ed. 469, 73 S. Ct. 397, or **Gallegos v. Nebraska**, 342 U. S. 55, 96 L. Ed. 86, 72 S. Ct. 141, where both defendants were illiterate.

The arrest by civilians and the removal to the State prison cannot be said to violate petitioner's rights under the Fourteenth Amendment. Arrests by private persons are permitted under the provisions of Title 15, Section 158, Code of Alabama 1940, which statute has not been attacked, and as has been pointed out, the removal to the State prison was for the petitioner's own safety.

The isolation of the petitioner was customary in cases of prisoners held for other authorities (R. p. 324) and certainly detention is not sufficient to render a confession involuntary under the Four-

teenth Amendment. **Brown v. Allen**, *supra*. No deliberate attempt to keep petitioner from seeing friends or relatives is present here as in **Watts v. Indiana**, 338 U. S. 49, 93 L. Ed. 1081, 69 S. Ct. 1347. In fact he was permitted to see those persons he requested.

The failure to take the petitioner before a magistrate is not of itself sufficient to vitiate the confession. See **Ingram v. State**, 34 Ala. App. 597, 42 So. 2d 30; **Stein v. New York**, 346 U. S. 156, 97 L. Ed. 1522, 73 S. Ct. 1077. We would also call this Honorable Court's attention to the fact that although no preliminary hearing was held, there was judicial knowledge of petitioner's arrest (R. p. 210).

Finally, the interrogation was not sufficient to render the confession involuntary. See **Gallegos v. Nebraska**, *supra*, and **Lisbena v. California**, 314 U. S. 219, 86 L. Ed. 166, 62 S. Ct. 280.

The majority opinion then states that, "The totality of the circumstances that preceded the confessions in this case goes beyond the allowable limits.", and cites **Turner v. Pennsylvania**, 338 U. S. 62, 93 L. Ed. 1810, and **Johnson v. Pennsylvania**, 340 U. S. 881, 95 L. Ed. 640.

Where is the relay technique which was so extensively used in **Turner**, *supra*? It is not present here. Where is the failure to advise petitioner of his rights? He was so advised in the instant case. Where is the avowed purpose to hold incommunicado until a statement is made? Here he was permitted to see those he wanted. And finally where is the false representation that others had informed upon him? All

these elements were present in the **Turner** case, *supra*. **Johnson v. Pennsylvania**, *supra*, was a case growing out of the same crime and the Supreme Court of the United States reversed the Supreme Court of Pennsylvania without a hearing.

There is presented here a set of facts which at most might raise a question as to whether or not the confessions were coerced; no glaring misconduct, no physical abuse, no promises or threats. Does the fact, and we submit that it was not conclusively proved, that petitioner was "weak of will or mind" place these circumstances within the category of those that "shock the conscience" and, therefore, are within the jurisdiction of this Court under the Fourteenth Amendment? We respectfully submit that it does not. Under the majority opinion in this cause, the mere suggestion of low mentality or mental illness coupled with interrogation, would deny the use of a confession obtained through such interrogation. The State law enforcement officers are shorn of one more weapon in their efforts to combat crime. If the states may not detain and interrogate those suspected of crime, they are then faced with the unhappy prospect of permitting suspected criminals, whether weak willed or strong, to roam at will and continue their criminal activities. The rights of an accused must be protected, but society also has a right to protection.

We are quick to agree that a confession obtained through the use of threats, abuse, promises, or other forms of coercion should not be permitted in evidence. But where, as here, there were no



threats, no promises, and an absolute absence of any form of physical abuse, we cannot agree that the Fourteenth Amendment has been violated.

We submit that never before has a combination of circumstances so lacking in condemned conduct, been held to warrant the Supreme Court of the United States to substitute its judgment for that of the trial court, which saw and heard the witnesses, and for that of the Supreme Court of Alabama, that so carefully reviewed this case, and to assert its jurisdiction in reversing the appellate court of a sovereign state in the ordinary and regular prosecution of crime. We submit that the facts here do not "shock the conscience" or present a case of denial of due process.

We respectfully ask this Honorable Court to reconsider its Opinion of January 14, 1957, and to uphold the Supreme Court of Alabama.

Respectfully submitted,

JOHN PATTERSON  
Attorney General of Alabama

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ROBERT STRAUB  
Special Assistant Attorney  
General of Alabama

COUNSEL FOR  
RESPONDENT

**CERTIFICATE OF SERVICE**

I, Robert Straub, one of the attorneys for the respondent, The State of Alabama, and a member of the Bar of the Supreme Court of the United States, hereby certify that on the \_\_\_\_\_ day of February, 1957, I served copies of the foregoing petition for rehearing on Peter A. Hall, 1630 Fourth Avenue, North, Birmingham, Alabama, by placing a copy in a duly addressed envelope, with first class postage prepaid, in the United States Post Office at Montgomery, Alabama, and on Jack Greenberg, 107 West 43rd Street, New York 36, New York, by placing a copy in a duly addressed envelope, with Air Mail postage prepaid, in the United States Post Office at Montgomery, Alabama:

I further certify that this petition for rehearing is presented in good faith and not for delay.

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**ROBERT STRAUB**

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